

Nottawaseppi Huron Band of the Potawatomi

A Federally Recognized Tribal Government

September 12, 2012

To: Honorable Judy K. Emmons, Chairperson
Members of the Committee
Families, Seniors, and Human Services Committee
Michigan Senate
1005 Farnum Building
Lansing, MI 48909

From: Homer A. Mandoka, Chairperson
Nottawaseppi Huron Band of the Potawatomi

TESTIMONY IN SUPPORT OF S.B. 1232 ENACTING A MICHIGAN INDIAN FAMILY PRESERVATION ACT

Senator Emmons and other distinguished members of the Families, Seniors and Human Services Committee, I am pleased to appear before you today to testify in support of S.B. 1232 – the Michigan Indian Family Preservation Act. I also urge the Committee to support and include specific amendments, which would make technical clarifications to SB 1232, the substance of which I have provided to the Committee.

I appear before you today as both an elected Leader representing my own Nation but also as a former foster parent. I also am here to represent and present a resolution of support adopted by the United Tribes of Michigan, an organization which represents 10 of Michigan's federally-recognized Indian tribes.

The United States Congress enacted the Indian Child Welfare Act (ICWA) in 1978 to establish minimum federal standards for the removal of Indian children from their families and placement of Indian children in foster or adoptive homes. In its legislative findings, the Congress found that an "alarmingly high percentage of Indian families are broken up by removal, often unwarranted, of their children ... by nontribal public and private agencies" and that "an alarmingly high percentage of such children are placed in non-tribal foster and adoptive homes".

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The removal of Indian children was often done without regard for traditional child-rearing practices within Indian families and Tribes and without regard to the interests of Indian tribal governments in protecting its citizens and maintaining social and cultural connections with its children. In fact, Congress recognized that "there is no resource more vital to the continued existence and integrity of Indian tribes than their children".

Although ICWA has been the law of this Country for nearly 34 years, compliance with the "minimum Federal" standards contained in ICWA has continued to be a problem in many states, including Michigan. Too often, those involved in the State Court system have not fully understand the reason ICWA was enacted or how to comply with the substance and spirit of ICWA. In other cases, Tribes have found some Judges and social workers to actually be opposed to working with Tribes and complying with ICWA.

These problems have created disparities in case management and continue to be reflected in litigation that fails to protect the best interests of Indian children.

For nearly 30 years, many of us have believed that Michigan needs a state law mirroring ICWA in order to realize the promise of ICWA and preserve Indian families.

We believe that the Michigan Indian Family Preservation Act s our means of finding a resolution to many of the problems that have prevented ICWA from being fully implemented in Michigan.

SB 1232 is the culmination of an effort that began in 2009, when the Supreme Court Administrator's Office (SCAO) acting in conjunction with the Department of Human Services and Tribal representatives came together to address the failure of state court judges and local child welfare agencies, including the Department of Human Services, to follow the intent and spirit of the Indian Child Welfare Act (ICWA).

This task force was comprised of state court judges, both circuit, family and probate, attorneys that practiced in these courts on behalf of tribes in Indian Child Welfare cases, tribal court judges, DHS representatives, tribal council members and other interested persons invited by SCAO. It was the consensus of the group that state court judges were not following ICWA and that a strategy had to be developed to help state court judges do a better job of protecting Indian children and families. The strategy developed had three parts the final of which was the MIFPA statute.

The first project undertaken was to develop a Judicial Bench Book for state court judges to have with them right on the bench that they could look to as a resource when dealing with an ICWA case. With the cooperation of SCAO and the Michigan Judicial Institute a Bench Book was created and made available to courts throughout Michigan. This task was completed in 2009, at which time the group took up the next part of the process.

It was believed by the task force that Michigan state court judges will follow state court rules. With that premise in mind, Subchapter 3.900 Proceedings Involving Juveniles was amended by incorporating provisions of ICWA into various rules relating to child protective and status offense proceedings. The Supreme Court adopted this rule February 2, 2010 and it was made effective May 1, 2010. The Supreme Court's recognition of the plight of Indian families and Indian children in the child welfare system was an inspiration to the task force and helped us believe that a Michigan version of ICWA was possible.

It is unfortunate to have to say again, that despite these developments, not all Michigan state court judges, in these child welfare cases, follow the provisions of ICWA. Many of the continuing problems we see are the result of a lack of clarity as to what specific steps were needed to comply with ICWA. With that concern in mind, the task force worked for over 18 months to develop a draft that became the legislation that you have before you today.

SB 1232 represents the culmination of a remarkable collaborative that has involved nearly every segment of stakeholders interested in the welfare of Indian children, including Tribal Leaders, representatives of the Michigan Department of Human Services, State and Tribal Court Judges, representatives of the State Bar of Michigan, prosecutors, academics and private practitioners.

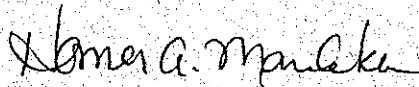
Nearly every one of Michigan's 12 federally recognized Indian tribes has adopted resolutions or statements of support of SB 1232, including the Nottawaseppi Huron Band of the Potawatomi.

The United Tribes of Michigan has requested a handful of specific amendments to SB 1232, which we believe will ensure that the Michigan Indian Family Preservation Act is both consistent with and builds on the Court Rules. These amendments were suggested by attorneys and judges representing the same stakeholders who participated in the ICWA subcommittee. I strongly urge to Committee to support an amendment that would incorporate these suggested changes into the final version of the Bill to be voted on by the Committee.

We have an unprecedented opportunity to realize a vision that was first discussed nearly 30 years ago and codify the ICWA into Michigan law. The time for legislative action is short but we believe the Michigan Legislature, working in concert with Governor Snyder, can accomplish this. It is time to take this important step that will clarify the State's legal responsibilities under ICWA and will promote preservation of Indian families in this State.

Thank you again for the opportunity to speak in support of SB 1232 and I urge this Committee to take prompt action to approve SB 1232, with the amendments proposed, and to bring this important legislation to a vote by the full Senate.

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Homer A. Mandoka
Council Chairperson

Requested amendments to SB 1232 as approved by MIFPA Taskforce members and supported by the United Tribes of Michigan:

1. Section 3.(B)(i)(A) - Page 4, line 11: Replace the reference to "Foster Care" with "Foster home or institution".
JUSTIFICATION: ICWA uses the phrase "foster home or institution". The change will ensure that MIFPA is consistent with ICWA and avoid confusion that somehow placement in an institution is not an out-of-home placement triggering MIFPA/ICWA procedures.
2. Section 11 – page 14, line 5: Replace "may" with "shall have a right to".
JUSTIFICATION: Want to make sure this provision is not construed as giving the court discretion to determine if a particular party is entitled to obtain reports and other documents. Clarifies that this is a legal right.
3. Section 15(2) – page 19, line 5: Add the word "qualified" between "1" and "expert, so this read "at least 1 qualified expert witness".
JUSTIFICATION: This addition will ensure that reference to an "expert witness" clearly refers to the criteria prescribed for determining when an expert witness is "qualified" under the standards set forth in Section 17 of SB 1232.
4. Section 15(2) – page 19, line 12: Delete the words "a showing".
JUSTIFICATION: Adding the words "a showing" potentially creates confusion as to the appropriate standard of proof required to support removal of an Indian child. The words "a showing" are not found in MCR 3.967 and adding that phrase to the legislation creates an unnecessary ambiguity and/or conflict with the Court Rule.
5. Section 15(4) – page 19, line 24, add the phrase "at least 1" before "qualified expert witness" and add the phrase "who has knowledge about the child-rearing practices of the Indian child's tribe" after "expert witness. This would then read "at least 1 qualified witness who has knowledge about the child-rearing practices of the Indian child's tribe".
JUSTIFICATION: This would ensure that the requirements for expert witness testimony supporting a termination of parental rights was no less stringent than those needed to remove an Indian child from his/her home under Section 15(2). This change is very important to the Bay Mills Indian Community.
6. Section 17(1)(C) – page 20, line 19: Add the phrase "within the Indian child's tribe" after the word "customs". This phrase would now read: "and how the Tribal customs within the Indian child's tribe pertain to family organization and child rearing practices."
JUSTIFICATION: This would ensure that expert witness testimony would require testimony from at least 1 expert witness who has at least general knowledge about the Tribal customs specifically applying to the Indian child's tribe vs. someone claiming general knowledge about Indian customs that may have no relevance to the Indian child's tribe.

7. Section 39 – page 29, line 27: Add a reference to Section “7” before the reference to Section 9.

JUSTIFICATION: We believe the omission of a cross-reference to Section 7 was an oversight. This will ensure that there is a right to petition to invalidate proceedings in which a Michigan Court exercises jurisdiction over and Indian child who is subject to the exclusive jurisdiction of a Tribal Court.